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8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
Against:

13 **LYNN ADELE PRICKETT VARALLO,**  
14 a.k.a. **LYNN ADELE PRICKETT**

15 1011 Eighth Street  
Coronado, CA 92118  
16

17 Registered Nurse License No. 411880

18 Respondent  
19

Case No. 2004-272

**FIRST AMENDED**  
**PETITION TO REVOKE**  
**PROBATION**

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Petition to Revoke  
23 Probation solely in her official capacity as the Executive Officer of the Board of Registered  
24 Nursing.

25 2. On or about March 31, 1987, the Board issued Registered Nurse License  
26 No. 411880 to Lynn Adele Prickett Varallo, also known as Lynn Adele Prickett (Respondent).

27 3. In a disciplinary action entitled "In the Matter of Accusation Against Lynn  
28 Varallo," Case No. 2004-272, the Board issued a decision, effective March 2, 2006, in which

1 Respondent's Registered Nurse License was revoked. However, the revocation was stayed and  
2 Respondent's license was placed on probation for a period of three (3) years with certain terms  
3 and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4 **JURISDICTION RE PETITION TO REVOKE PROBATION**

5 4. This Petition to Revoke Probation is brought before the Board of  
6 Registered Nursing (Board), Department of Consumer Affairs, under the authority of Business  
7 and Professions Code section 2750, which provides, in pertinent part, that the Board may  
8 discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
9 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 5. Business and Professions Code section 118(b) states, in pertinent part:

11 The suspension, expiration, or forfeiture by operation of  
12 law of a license issued by a board in the department, . . . , shall  
13 not, during any period in which it may be renewed, restored,  
14 reissued, or reinstated, deprive the board of its authority to  
15 institute or continue a disciplinary proceeding against the  
16 licensee upon any ground provided by law or to enter an order  
17 suspending or revoking the license or otherwise taking disciplinary  
18 action against the licensee on any such ground.

16 6. This Petition to Revoke Probation is also brought pursuant to Board  
17 Decision No. 2004-272, which provides in pertinent part as follows:

18 "IT IS HEREBY ORDERED that Registered Nurse License No. 411880  
19 issued to Respondent Lynn Varallo is revoked. However, the revocation is stayed  
20 and Respondent is placed on probation for three (3) years on the following terms  
21 and conditions.

22 "...

23 "12. **Violation of Probation.** If Respondent violates the conditions of  
24 her probation, the Board after giving Respondent notice and an opportunity  
25 to be heard, may set aside the stay order and impose the stayed discipline  
26 (revocation/suspension) of Respondent's license.

27 If during the period of probation, an accusation or petition to revoke  
28 probation has been filed against Respondent's license or the Attorney General's

Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board."

**FIRST CAUSE TO REVOKE PROBATION**

(Failure to Obey Laws)

7. At all times after the effective date of Respondent's probation, Condition 1 stated, in pertinent part:

**"Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process."

8. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 1, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to permit monitoring of this condition by failing to submit a completed set of fingerprints to the Board within 45 days of the effective date of the Decision

**SECOND CAUSE TO REVOKE PROBATION**

(Failure to Comply with Board's Probation Program)

9. At all times after the effective date of Respondent's probation, Condition 2 stated, in pertinent part:

**"Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of

1 the Respondent's compliance with the Board's Probation Program. Respondent  
2 shall inform the Board in writing within no more than 15 days of any address  
3 change and shall at all times maintain an active, current license status with the  
4 Board, including during any period of suspension."

5 10. Respondent's probation is subject to revocation because she failed to  
6 comply with Probation Condition 2, referenced above. The facts and circumstances regarding this  
7 violation are as follows:

8 A. Respondent failed to comply with probation conditions 1, 2, 3, 14, 15  
9 17, 18 and 19, as more specifically described in this Petition to Revoke Probation, failed to  
10 maintain a current and active license by letting her license lapse on February 28, 2007, and failed  
11 to notify the Board within 15 days of a change of address by failing to maintain a current address  
12 with the Board.

### 13 **THIRD CAUSE TO REVOKE PROBATION**

14 (Failure to Report in Person)

15 11. At all times after the effective date of Respondent's probation, Condition 3  
16 stated:

17 "Report in Person. Respondent, during the period of probation, shall  
18 appear in person at interviews/meetings as directed by the Board or its designated  
19 representatives."

20 12. Respondent's probation is subject to revocation because she failed to  
21 comply with Probation Condition 3, referenced above. The facts and circumstances regarding  
22 this violation are as follows:

23 A. Respondent failed to meet with a Board representative on April 28,  
24 2006, and May 25, 2006.

### 25 **FOURTH CAUSE TO REVOKE PROBATION**

26 (Failure to Complete Physical Examination)

27 13. At all times after the effective date of Respondent's probation, Condition  
28 14 stated, in pertinent part:

1                   **“Physical Examination.** Within 45 days of the effective date of this  
2                   Decision, Respondent, at her expense, shall have a licensed physician, nurse  
3                   practitioner, or physician assistant, who is approved by the Board before the  
4                   assessment is performed, submit an assessment of the Respondent’s physical  
5                   condition and capability to perform the duties of a registered nurse. Such an  
6                   assessment shall be submitted in a format acceptable to the Board. If medically  
7                   determined, a recommended treatment program will be instituted and followed by  
8                   the Respondent with the physician, nurse practitioner, or physician assistant  
9                   providing written reports to the Board on forms provided by the Board.”

10                   14.     Respondent’s probation is subject to revocation because she failed to  
11                   comply with Probation Condition 14, referenced above. The facts and circumstances regarding  
12                   this violation are as follows:

13                             A.     Respondent failed to provide evidence of completion of a physical  
14                   examination within 45 days of the effective date of the decision.

15                                   **FIFTH CAUSE TO REVOKE PROBATION**

16                   (Failure to Participate in Treatment/Rehabilitation Program for Chemical Dependence)

17                   15.     At all times after the effective date of Respondent’s probation, Condition  
18                   15 stated:

19                             **“Participate in Treatment/Rehabilitation Program for Chemical**  
20                   **Dependence.** Respondent, at her expense, shall successfully complete during the  
21                   probationary period or shall have successfully completed prior to commencement  
22                   of probation a Board-approved treatment/rehabilitation program of at least six  
23                   months duration. As required, reports shall be submitted by the program on forms  
24                   provided by the Board. If Respondent has not completed a Board-approved  
25                   treatment/rehabilitation program prior to commencement of probation,  
26                   Respondent, within 45 days from the effective date of the decision, shall be  
27                   enrolled in a program. If a program is not successfully completed within the first  
28                   nine months of probation, the Board shall consider Respondent in violation of

1 probation.

2 "Based on Board recommendation, each week Respondent shall be required  
3 to attend at least one, but no more than five 12-step recovery meetings or  
4 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse  
5 support group as approved and directed by the Board. If a nurse support group is  
6 not available, an additional 12-step meeting or equivalent shall be added.  
7 Respondent shall submit dated and signed documentation confirming such  
8 attendance to the Board during the entire period of probation. Respondent shall  
9 continue with the recovery plan recommended by the treatment/rehabilitation  
10 program or a licensed mental health examiner and/or other ongoing recovery  
11 groups."

12 16. Respondent's probation is subject to revocation because she failed to  
13 comply with Probation Condition 15, referenced above. The facts and circumstances regarding  
14 this violation are as follows:

15 A. Respondent failed to provide evidence of completion of a 6-month  
16 chemical dependency program. Additionally, she failed to provide evidence of attending the  
17 required Nurse Support Group and AA or NA meetings every week.

### 18 **SIXTH CAUSE TO REVOKE PROBATION**

19 (Failure to Submit to Tests and Samples)

20 17. At all times after the effective date of Respondent's probation, Condition  
21 17 stated, in pertinent part:

22 "Submit to Tests and Samples. Respondent, at her expense, shall  
23 participate in a random, biological fluid testing or a drug screening program which  
24 the Board approves. The length of time and frequency will be subject to approval  
25 by the Board. Respondent is responsible for keeping the Board informed of  
26 Respondent's current telephone number at all times. Respondent shall also ensure  
27 that messages may be left at the telephone number when she is not available and  
28 ensure that reports are submitted directly by the testing agency to the Board, as

1 directed. Any confirmed positive finding shall be reported immediately to the  
2 Board by the program and Respondent shall be considered in violation of  
3 probation.

4 In addition, Respondent, at any time during the period of probation, shall  
5 fully cooperate with the Board or any of its representatives, and shall, when  
6 requested, submit to such tests and samples as the Board or its representatives may  
7 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other  
8 controlled substances.”

9 18. Respondent’s probation is subject to revocation because she failed to  
10 comply with Probation Condition 17, referenced above. The facts and circumstances regarding  
11 this violation are as follows:

12 A. Respondent failed to participate in the required random drug testing.

13 **SEVENTH CAUSE TO REVOKE PROBATION**

14 (Failure to Complete Mental Health Examination)

15 19. At all times after the effective date of Respondent’s probation, Condition  
16 18 stated, in pertinent part:

17 “**Mental Health Examination.** Respondent shall, within 45 days of the  
18 effective date of this Decision, have a mental health examination including  
19 psychological testing as appropriate to determine her capability to perform the  
20 duties of a registered nurse. The examination will be performed by a psychiatrist,  
21 psychologist or other licensed mental health practitioner approved by the Board.  
22 The examining mental health practitioner will submit a written report of that  
23 assessment and recommendations to the Board. All costs are the responsibility of  
24 Respondent. Recommendations for treatment, therapy or counseling made as a  
25 result of the mental health examination will be instituted and followed by  
26 Respondent.”

27 20. Respondent’s probation is subject to revocation because she failed to  
28 comply with Probation Condition 18, referenced above. The facts and circumstances regarding

1 this violation are as follows:

2 A. Respondent failed to provide evidence of completion of a mental  
3 health examination within 45 days of the effective date of the Decision.

4 **EIGHTH CAUSE TO REVOKE PROBATION**

5 (Failure to Attend Therapy or Counseling Program)

6 21. At all times after the effective date of Respondent's probation, Condition  
7 19 stated:

8 ***"Therapy or Counseling Program.*** Respondent, at her expense, shall  
9 participate in an on-going counseling program until such time as the Board  
10 releases her from this requirement and only upon the recommendation of the  
11 counselor. Written progress reports from the counselor will be required at  
12 various intervals."

13 22. Respondent's probation is subject to revocation because she failed to  
14 comply with Probation Condition 19, referenced above. The facts and circumstances regarding  
15 this violation are as follows:

16 A. Respondent failed to provide evidence of attending therapy or  
17 counseling.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
20 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking the probation that was granted by the Board of Registered  
22 Nursing in Case No. 2004-272 and imposing the disciplinary order that was stayed thereby  
23 revoking Registered Nurse License No. 411880 issued to Lynn Adele Prickett Varallo;

24 2. Revoking or suspending Registered Nurse License No. 411880, issued to  
25 Lynn Adele Prickett Varallo;

26 ///

27 ///

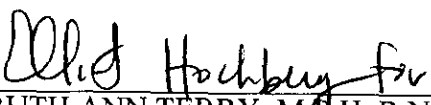
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3. Taking such other and further action as deemed necessary and proper.

DATED: 2/7/08

  
RUTH ANN TERRY, M.B.H., R.N.  
Executive Officer  
Board of Registered Nursing  
State of California  
Complainant

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Rev. 1/30/08

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9 **BEFORE THE**  
10 **BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
Against:

Case No. 2004-272

13 **LYNN ADELE PRICKETT VARALLO,**  
14 a.k.a. **LYNN ADELE PRICKETT**

**PETITION TO REVOKE  
PROBATION**

15 1011 Eighth Street  
16 Coronado, CA 92118

17 Registered Nurse License No. 411880

18 Respondent

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Petition to Revoke  
23 Probation solely in her official capacity as the Executive Officer of the Board of Registered  
24 Nursing.

25 2. On or about March 31, 1987, the Board issued Registered Nurse License  
26 No. 411880 to Lynn Adele Prickett Varallo, also known as Lynn Adele Prickett (Respondent).

27 3. In a disciplinary action entitled "In the Matter of Accusation Against Lynn  
28 Varallo," Case No. 2004-272, the Board issued a decision, effective March 2, 2006, in which

Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

#### JURISDICTION RE PETITION TO REVOKE PROBATION

4. This Petition to Revoke Probation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of Business and Professions Code section 2750, which provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Business and Professions Code section 118(b) states, in pertinent part:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, . . . , shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

6. This Petition to Revoke Probation is also brought pursuant to Board Decision No. 2004-272, which provides in pertinent part as follows:

"IT IS HEREBY ORDERED that Registered Nurse License No. 411880 issued to Respondent Lynn Varallo is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

". . .

"12. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's

1 Office has been requested to prepare an accusation or petition to revoke  
2 probation against Respondent's license, the probationary period shall  
3 automatically be extended and shall not expire until the accusation or  
4 petition has been acted upon by the Board."

5 FIRST CAUSE TO REVOKE PROBATION

6 (Failure to Obey Laws)

7 7. At all times after the effective date of Respondent's probation, Condition 1  
8 stated, in pertinent part:

9 "Obey All Laws. Respondent shall obey all federal, state and local laws.  
10 A full and detailed account of any and all violations of law shall be reported by  
11 Respondent to the Board in writing within seventy-two (72) hours of occurrence.  
12 To permit monitoring of compliance with this condition, Respondent shall submit  
13 completed fingerprint forms and fingerprint fees within 45 days of the effective  
14 date of the decision, unless previously submitted as part of the licensure  
15 application process."

16 8. Respondent's probation is subject to revocation because she failed to  
17 comply with Probation Condition 1, referenced above. The facts and circumstances regarding this  
18 violation are as follows:

19 A. Respondent failed to permit monitoring of this condition by failing  
20 to submit a completed set of fingerprints to the Board within 45 days of the effective date of the  
21 Decision

22 SECOND CAUSE TO REVOKE PROBATION

23 (Failure to Comply with Board's Probation Program)

24 9. At all times after the effective date of Respondent's probation, Condition 2  
25 stated, in pertinent part:

26 "Comply with the Board's Probation Program. Respondent shall fully  
27 comply with the conditions of the Probation Program established by the Board and  
28 cooperate with representatives of the Board in its monitoring and investigation of

1 the Respondent's compliance with the Board's Probation Program. Respondent  
2 shall inform the Board in writing within no more than 15 days of any address  
3 change and shall at all times maintain an active, current license status with the  
4 Board, including during any period of suspension."

5 10. Respondent's probation is subject to revocation because she failed to  
6 comply with Probation Condition 2, referenced above. The facts and circumstances regarding this  
7 violation are as follows:

8 A. Respondent failed to comply with probation conditions 1, 2, 3, 14, 15  
9 17, 18 and 19, as more specifically described in this Petition to Revoke Probation, failed to  
10 maintain a current and active license by letting her license lapse on February 28, 2007, and failed  
11 to notify the Board within 15 days of a change of address by failing to maintain a current address  
12 with the Board.

13 THIRD CAUSE TO REVOKE PROBATION

14 (Failure to Report in Person)

15 11. At all times after the effective date of Respondent's probation, Condition 3  
16 stated:

17 "Report in Person. Respondent, during the period of probation, shall  
18 appear in person at interviews/meetings as directed by the Board or its designated  
19 representatives."

20 12. Respondent's probation is subject to revocation because she failed to  
21 comply with Probation Condition 3, referenced above. The facts and circumstances regarding  
22 this violation are as follows:

23 A. Respondent failed to meet with a Board representative on April 28,  
24 2006, and May 25, 2006.

25 FOURTH CAUSE TO REVOKE PROBATION

26 (Failure to Complete Physical Examination)

27 13. At all times after the effective date of Respondent's probation, Condition  
28 14 stated, in pertinent part:

1                   **“Physical Examination.** Within 45 days of the effective date of this  
2                   Decision, Respondent, at her expense, shall have a licensed physician, nurse  
3                   practitioner, or physician assistant, who is approved by the Board before the  
4                   assessment is performed, submit an assessment of the Respondent’s physical  
5                   condition and capability to perform the duties of a registered nurse, including a  
6                   determination as set forth below in Condition 16, “Rule-Out Substance Abuse  
7                   Assessment.” Such an assessment shall be submitted in a format acceptable to the  
8                   Board. If medically determined, a recommended treatment program will be  
9                   instituted and followed by the Respondent with the physician, nurse practitioner,  
10                  or physician assistant providing written reports to the Board on forms provided  
11                  by the Board.”

12                  14.     Respondent’s probation is subject to revocation because she failed to  
13                  comply with Probation Condition 14, referenced above. The facts and circumstances regarding  
14                  this violation are as follows:

15                         A.     Respondent failed to provide evidence of completion of a physical  
16                  examination within 45 days of the effective date of the decision.

17                                 **FIFTH CAUSE TO REVOKE PROBATION**

18                   (Failure to Participate in Treatment/Rehabilitation Program for Chemical Dependence)

19                  15.     At all times after the effective date of Respondent’s probation, Condition  
20                  15 stated, in relevant part:

21                         **“Mental Health Examination.** Respondent shall, within 45 days of the  
22                         effective date of this Decision, have a mental health examination including  
23                         psychological testing as appropriate to determine her capability to perform the  
24                         duties of a registered nurse. The examination will be performed by a psychiatrist,  
25                         psychologist or other licensed mental health practitioner approved by the Board.  
26                         The examining mental health practitioner will submit a written report of that  
27                         assessment and recommendations to the Board. All costs are the responsibility of  
28                         Respondent. Recommendations for treatment, therapy or counseling made as a

1 result of the mental health examination will be instituted and followed by  
2 Respondent."

3 16. Respondent's probation is subject to revocation because she failed to  
4 comply with Probation Condition 15, referenced above. The facts and circumstances regarding  
5 this violation are as follows:

6 A. Respondent failed to provide evidence of completion of a 6-month  
7 chemical dependency program. Additionally, she failed to provide evidence of attending the  
8 required Nurse Support Group and AA or NA meetings every week.

9 SIXTH CAUSE TO REVOKE PROBATION

10 (Failure to Submit to Tests and Samples)

11 17. At all times after the effective date of Respondent's probation, Condition  
12 17 stated, in pertinent part:

13 "Submit to Tests and Samples. Respondent, at her expense, shall  
14 participate in a random, biological fluid testing or a drug screening program which  
15 the Board approves. The length of time and frequency will be subject to approval  
16 by the Board. Respondent is responsible for keeping the Board informed of  
17 Respondent's current telephone number at all times. Respondent shall also ensure  
18 that messages may be left at the telephone number when she is not available and  
19 ensure that reports are submitted directly by the testing agency to the Board, as  
20 directed. Any confirmed positive finding shall be reported immediately to the  
21 Board by the program and Respondent shall be considered in violation of  
22 probation.

23 In addition, Respondent, at any time during the period of probation, shall  
24 fully cooperate with the Board or any of its representatives, and shall, when  
25 requested, submit to such tests and samples as the Board or its representatives may  
26 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other  
27 controlled substances."

28 ///

1           18.     Respondent's probation is subject to revocation because she failed to  
2 comply with Probation Condition 17, referenced above. The facts and circumstances regarding  
3 this violation are as follows:

4                   A.     Respondent failed to participate in the required random drug testing.

5                               SEVENTH CAUSE TO REVOKE PROBATION

6                               (Failure to Complete Mental Health Examination)

7           19.     At all times after the effective date of Respondent's probation, Condition  
8 18 stated, in pertinent part:

9                               **"Mental Health Examination.** Respondent shall, within 45 days of the  
10 effective date of this Decision, have a mental health examination including  
11 psychological testing as appropriate to determine her capability to perform the  
12 duties of a registered nurse. The examination will be performed by a psychiatrist,  
13 psychologist or other licensed mental health practitioner approved by the Board.  
14 The examining mental health practitioner will submit a written report of that  
15 assessment and recommendations to the Board. All costs are the responsibility of  
16 Respondent. Recommendations for treatment, therapy or counseling made as a  
17 result of the mental health examination will be instituted and followed by  
18 Respondent."

19           20.     Respondent's probation is subject to revocation because she failed to  
20 comply with Probation Condition 18, referenced above. The facts and circumstances regarding  
21 this violation are as follows:

22                   A.     Respondent failed to provide evidence of completion of a mental  
23 health examination within 45 days of the effective date of the Decision.

24                               EIGHTH CAUSE TO REVOKE PROBATION

25                               (Failure to Attend Therapy or Counseling Program)

26           21.     At all times after the effective date of Respondent's probation, Condition  
27 19 stated:

28 ///



22. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 19, referenced above. The facts and circumstances regarding this violation are as follows:

PRAYER

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2004-272 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 411880 issued to Lynn Adele Prickett Varallo;

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/29/07

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80178289.wpd

**Exhibit A**

**Decision and Order**

**Board of Registered Nursing Case No. 2004-272**

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**LYNN VARALLO**

Registered Nurse License No. 411880

Respondent.

Case No. 2004 - 272

OAH No. L - 2004070094

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 2, 2006.

It is so ORDERED January 31, 2006.

  
\_\_\_\_\_  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General  
of the State of California  
2 RICHARD D. GARSKE, State Bar No. 50569  
Supervising Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101

5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2075  
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

13 **LYNN VARALLO**  
aka Lynn Prickett  
14 1011 Eighth St.  
Coronado, CA 92118

15 Registered Nurse License No. 411880

16 Respondent.  
17

Case No. 2004-272

OAH No. L - 2004070094

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18  
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to  
20 the above-entitled proceedings that the following matters are true:  
21

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of  
24 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
25 represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
26 Richard D. Garske, Supervising Deputy Attorney General.

27 2. Lynn Varallo (Respondent) is represented in this proceeding by Attorney  
28 M. Gayle Askren, Esq. whose address is 1224 Tenth St. Ste. 206, Coronado, CA 92118.

3. On or about January 1, 1987, the Board of Registered Nursing issued Registered Nurse License Number 411880 to Respondent. The license will expire on February 28, 2005, unless renewed.

## JURISDICTION

4. Accusation No. 2004 - 272 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs. The Accusation and all other statutorily required documents were properly served on Respondent on April 12, 2004. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2004-272 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2004-272 Respondent has also carefully read, fully discussed with counsel and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her ; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

**CULPABILITY**

8. Respondent admits the truth of each and every charge and allegation  
Accusation No. 2004-272.

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9. Respondent agrees that her Registered Nurse License Number 411880 is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

**Criminal Court Orders:** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

4

1                   3.     **Report in Person.** Respondent, during the period of probation, shall  
2 appear in person at interviews/meetings as directed by the Board or its designated  
3 representatives.

4                   4.     **Residency, Practice, or Licensure Outside of State.** Periods of  
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction  
6 of this probation time period. Respondent's probation is tolled, if and when she resides outside  
7 of California. Respondent must provide written notice to the Board within 15 days of any change  
8 of residency or practice outside the state, and within 30 days prior to re-establishing residency or  
9 returning to practice in this state.

10                   Respondent shall provide a list of all states and territories where she has ever been  
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further  
12 provide information regarding the status of each license and any changes in such license status  
13 during the term of probation. Respondent shall inform the Board if she applies for or obtains a  
14 new nursing license during the term of probation.

15                   5.     **Submit Written Reports.** Respondent, during the period of probation,  
16 shall submit or cause to be submitted such written reports/declarations and verification of actions  
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
19 Program. Respondent shall immediately execute all release of information forms as may be  
20 required by the Board or its representatives.

21                   Respondent shall provide a copy of this Decision to the nursing regulatory agency  
22 in every state and territory in which she has a registered nurse license.

23                   6.     **Function as a Registered Nurse.** Respondent, during the period of  
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
25 hours per week for 6 consecutive months or as determined by the Board.

26                   For purposes of compliance with the section, "engage in the practice of registered  
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
28 work in any non-direct patient care position that requires licensure as a registered nurse.



1           The Board may require that advanced practice nurses engage in advanced practice  
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
3 Board.

4           If Respondent has not complied with this condition during the probationary term,  
5 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
7 grant an extension of Respondent's probation period up to one year without further hearing in  
8 order to comply with this condition. During the one year extension, all original conditions of  
9 probation shall apply.

10           **7. Employment Approval and Reporting Requirements.** Respondent  
11 shall obtain prior approval from the Board before commencing or continuing any employment,  
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
13 performance evaluations and other employment related reports as a registered nurse upon request  
14 of the Board.

15           Respondent shall provide a copy of this Decision to her employer and immediate  
16 supervisors prior to commencement of any nursing or other health care related employment.

17           In addition to the above, Respondent shall notify the Board in writing within  
18 seventy-two (72) hours after she obtains any nursing or other health care related employment.  
19 Respondent shall notify the Board in writing within seventy-two (72) hours after she is  
20 terminated or separated, regardless of cause, from any nursing, or other health care related  
21 employment with a full explanation of the circumstances surrounding the termination or  
22 separation.

23           **8. Supervision.** Respondent shall obtain prior approval from the Board  
24 regarding Respondent's level of supervision and/or collaboration before commencing or  
25 continuing any employment as a registered nurse, or education and training that includes patient  
26 care.

27           Respondent shall practice only under the direct supervision of a registered nurse  
28 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative

1 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)  
2 are approved.

3 Respondent's level of supervision and/or collaboration may include, but is not  
4 limited to the following:

5 (a) Maximum - The individual providing supervision and/or collaboration is  
6 present in the patient care area or in any other work setting at all times.

7 (b) Moderate - The individual providing supervision and/or collaboration is in  
8 the patient care unit or in any other work setting at least half the hours Respondent works.

9 (c) Minimum - The individual providing supervision and/or collaboration has  
10 person-to-person communication with Respondent at least twice during each shift worked.

11 (d) Home Health Care - If Respondent is approved to work in the home health  
12 care setting, the individual providing supervision and/or collaboration shall have person-to-  
13 person communication with Respondent as required by the Board each work day. Respondent  
14 shall maintain telephone or other telecommunication contact with the individual providing  
15 supervision and/or collaboration as required by the Board during each work day. The individual  
16 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-  
17 site visits to patients' homes visited by Respondent with or without Respondent present.

18 9. **Employment Limitations.** Respondent shall not work for a nurse's  
19 registry, in any private duty position as a registered nurse, a temporary nurse placement agency,  
20 a traveling nurse, or for an in-house nursing pool.

21 Respondent shall not work for a licensed home health agency as a visiting nurse  
22 unless the registered nursing supervision and other protections for home visits have been  
23 approved by the Board. Respondent shall not work in any other registered nursing occupation  
24 where home visits are required.

25 Respondent shall not work in any health care setting as a supervisor of registered  
26 nurses. The Board may additionally restrict Respondent from supervising licensed vocational  
27 nurses and/or unlicensed assistive personnel on a case-by-case basis.

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1 Respondent shall not work as a faculty member in an approved school of nursing  
2 or as an instructor in a Board approved continuing education program.

3 Respondent shall work only on a regularly assigned, identified and predetermined  
4 worksite(s) and shall not work in a float capacity.

5 If Respondent is working or intends to work in excess of 40 hours per week, the  
6 Board may request documentation to determine whether there should be restrictions on the hours  
7 of work.

8 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall  
9 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
10 than six months prior to the end of her probationary term.

11 Respondent shall obtain prior approval from the Board before enrolling in the  
12 course(s). Respondent shall submit to the Board the original transcripts or certificates of  
13 completion for the above required course(s). The Board shall return the original documents to  
14 Respondent after photocopying them for its records.

15 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with  
16 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the  
17 amount of Four Thousand Five Hundred Twenty-Four Dollars (\$4,524.00). Respondent shall be  
18 permitted to pay these costs in a payment plan approved by the Board, with payments to be  
19 completed no later than three months prior to the end of the probation term.

20 If Respondent has not complied with this condition during the probationary term,  
21 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
22 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
23 grant an extension of Respondent's probation period up to one year without further hearing in  
24 order to comply with this condition. During the one year extension, all original conditions of  
25 probation will apply.

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1                   12.     **Violation of Probation.** If Respondent violates the conditions of her  
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's  
4 license.

5                   If during the period of probation, an accusation or petition to revoke probation has  
6 been filed against Respondent's license or the Attorney General's Office has been requested to  
7 prepare an accusation or petition to revoke probation against Respondent's license, the  
8 probationary period shall automatically be extended and shall not expire until the accusation or  
9 petition has been acted upon by the Board.

10                  13.     **License Surrender.** During Respondent's term of probation, if she ceases  
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
12 probation, Respondent may surrender her license to the Board. The Board reserves the right to  
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
14 take any other action deemed appropriate and reasonable under the circumstances, without  
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent  
16 will no longer be subject to the conditions of probation.

17                  Surrender of Respondent's license shall be considered a disciplinary action and  
18 shall become a part of Respondent's license history with the Board. A registered nurse whose  
19 license has been surrendered may petition the Board for reinstatement no sooner than the  
20 following minimum periods from the effective date of the disciplinary decision:

21                   (1)     Two years for reinstatement of a license that was surrendered for any  
22 reason other than a mental or physical illness; or

23                   (2)     One year for a license surrendered for a mental or physical illness.

24                  14.     **Physical Examination.** Within 45 days of the effective date of this  
25 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or  
26 physician assistant, who is approved by the Board before the assessment is performed, submit an  
27 assessment of the Respondent's physical condition and capability to perform the duties of a  
28 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If

1 medically determined, a recommended treatment program will be instituted and followed by the  
2 Respondent with the physician, nurse practitioner, or physician assistant providing written  
3 reports to the Board on forms provided by the Board.

4 If Respondent is determined to be unable to practice safely as a registered nurse,  
5 the licensed physician, nurse practitioner, or physician assistant making this determination shall  
6 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
7 Attorney General's office prepare an accusation or petition to revoke probation. Respondent  
8 shall immediately cease practice and shall not resume practice until notified by the Board.  
9 During this period of suspension, Respondent shall not engage in any practice for which a license  
10 issued by the Board is required until the Board has notified Respondent that a medical  
11 determination permits Respondent to resume practice. This period of suspension will not apply  
12 to the reduction of this probationary time period.

13 If Respondent fails to have the above assessment submitted to the Board within  
14 the 45-day requirement, Respondent shall immediately cease practice and shall not resume  
15 practice until notified by the Board. This period of suspension will not apply to the reduction of  
16 this probationary time period. The Board may waive or postpone this suspension only if  
17 significant, documented evidence of mitigation is provided. Such evidence must establish good  
18 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
19 provided. Only one such waiver or extension may be permitted.

20 15. **Participate in Treatment/Rehabilitation Program for Chemical**  
21 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary  
22 period or shall have successfully completed prior to commencement of probation a Board-  
23 approved treatment/rehabilitation program of at least six months duration. As required, reports  
24 shall be submitted by the program on forms provided by the Board. If Respondent has not  
25 completed a Board-approved treatment/rehabilitation program prior to commencement of  
26 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in  
27 a program. If a program is not successfully completed within the first nine months of probation,  
28 the Board shall consider Respondent in violation of probation.

1           Based on Board recommendation, each week Respondent shall be required to  
2 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics  
3 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed  
4 by the Board. If a nurse support group is not available, an additional 12-step meeting or  
5 equivalent shall be added. Respondent shall submit dated and signed documentation confirming  
6 such attendance to the Board during the entire period of probation. Respondent shall continue  
7 with the recovery plan recommended by the treatment/rehabilitation program or a licensed  
8 mental health examiner and/or other ongoing recovery groups.

9           **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
10 shall completely abstain from the possession, injection or consumption by any route of all  
11 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except  
12 when the same are ordered by a health care professional legally authorized to do so as part of  
13 documented medical treatment. Respondent shall have sent to the Board, in writing and within  
14 fourteen (14) days, by the prescribing health professional, a report identifying the medication,  
15 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the  
16 medication will no longer be required, and the effect on the recovery plan, if appropriate.

17           Respondent shall identify for the Board a single physician, nurse practitioner or  
18 physician assistant who shall be aware of Respondent's history of substance abuse and will  
19 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled  
20 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician  
21 assistant shall report to the Board on a quarterly basis Respondent's compliance with this  
22 condition. If any substances considered addictive have been prescribed, the report shall identify a  
23 program for the time limited use of any such substances.

24           The Board may require the single coordinating physician, nurse practitioner, or  
25 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in  
26 addictive medicine.

27           **17. Submit to Tests and Samples.** Respondent, at her expense, shall  
28 participate in a random, biological fluid testing or a drug screening program which the Board

1 approves. The length of time and frequency will be subject to approval by the Board.  
2 Respondent is responsible for keeping the Board informed of Respondent's current telephone  
3 number at all times. Respondent shall also ensure that messages may be left at the telephone  
4 number when she is not available and ensure that reports are submitted directly by the testing  
5 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately  
6 to the Board by the program and Respondent shall be considered in violation of probation.

7 In addition, Respondent, at any time during the period of probation, shall fully  
8 cooperate with the Board or any of its representatives, and shall, when requested, submit to such  
9 tests and samples as the Board or its representatives may require for the detection of alcohol,  
10 narcotics, hypnotics, dangerous drugs, or other controlled substances.

11 If Respondent has a positive drug screen for any substance not legally authorized  
12 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the  
13 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent  
14 from practice pending the final decision on the petition to revoke probation or the accusation.  
15 This period of suspension will not apply to the reduction of this probationary time period.

16 If Respondent fails to participate in a random, biological fluid testing or drug  
17 screening program within the specified time frame, Respondent shall immediately cease practice  
18 and shall not resume practice until notified by the Board. After taking into account documented  
19 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the  
20 Board may suspend Respondent from practice pending the final decision on the petition to  
21 revoke probation or the accusation. This period of suspension will not apply to the reduction of  
22 this probationary time period.

23 18. **Mental Health Examination.** Respondent shall, within 45 days of the  
24 effective date of this Decision, have a mental health examination including psychological testing  
25 as appropriate to determine her capability to perform the duties of a registered nurse. The  
26 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
27 practitioner approved by the Board. The examining mental health practitioner will submit a  
28 written report of that assessment and recommendations to the Board. All costs are the

1 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
2 result of the mental health examination will be instituted and followed by Respondent.

3           If Respondent is determined to be unable to practice safely as a registered nurse,  
4 the licensed mental health care practitioner making this determination shall immediately notify  
5 the Board and Respondent by telephone, and the Board shall request that the Attorney General's  
6 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
7 practice and may not resume practice until notified by the Board. During this period of  
8 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
9 is required, until the Board has notified Respondent that a mental health determination permits  
10 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
11 probationary time period.

12           If Respondent fails to have the above assessment submitted to the Board within  
13 the 45-day requirement, Respondent shall immediately cease practice and shall not resume  
14 practice until notified by the Board. This period of suspension will not apply to the reduction of  
15 this probationary time period. The Board may waive or postpone this suspension only if  
16 significant, documented evidence of mitigation is provided. Such evidence must establish good  
17 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
18 provided. Only one such waiver or extension may be permitted.

19           **19. Therapy or Counseling Program.** Respondent, at her expense, shall  
20 participate in an on-going counseling program until such time as the Board releases her from this  
21 requirement and only upon the recommendation of the counselor. Written progress reports from  
22 the counselor will be required at various intervals.

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1 ACCEPTANCE

2 I have carefully read the Stipulated Settlement and Disciplinary Order. I  
3 understand the stipulation and the effect it will have on my Registered Nurse License Number  
4 411880. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,  
5 and intelligently, and agree to be bound by the Decision and Order of the Board of Registered  
6 Nursing.

7 DATED: 7/1/05

8  
9   
10 LYNN VARALLO  
11 Respondent

12 DATED: 7/11/2005


13  
14   
15 M. GAYLE ASKEN, Esq.  
16 Attorney at Law

17  
18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
20 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
21 Affairs.

22 DATED: 7/13/05

23  
24   
25 BILL LOCKYER Attorney General  
26 of the State of California

27   
28 RICHARD D. GARSKE  
Supervising Deputy Attorney General

Attorneys for Complainant

**Exhibit A**  
**Accusation No. 2004 - 272**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 RICHARD D. GARSKE, State Bar No. 50569  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101  
5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2075  
Facsimile: (619) 645-2061

7  
8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2004-272**

13 LYNN VARALLO  
aka LYNN PRICKETT  
14 1011 Eighth Street  
Coronado, CA 92118

**A C C U S A T I O N**

15 Registered Nurse No. 411880

16  
17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
23 Department of Consumer Affairs.
- 24 2. On or about January 1, 1987, the Board of Registered Nursing (Board)  
25 issued Registered Nurse License Number 411880 to Lynn Varallo (Respondent). The License  
26 was in full force and effect at all times relevant to the charges brought herein and will expire on  
27 February 28, 2005, unless renewed.

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1           "(a) Obtain or possess in violation of law, or prescribe, or except as  
2           directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
3           himself or herself, or furnish or administer to another, any controlled substance as  
4           defined in Division 10 (commencing with Section 11000) of the Health and Safety  
5           Code or any dangerous drug or dangerous device as defined in Section 4022.

6           "(b) Use any controlled substance as defined in Division 10 (commencing  
7           with Section 11000) of the Health and Safety Code, or any dangerous drug or  
8           dangerous device as defined in Section 4022, or alcoholic beverages, to an extent  
9           or in a manner dangerous or injurious to himself or herself, any other person, or the  
10          public or to the extent that such use impairs his or her ability to conduct with safety  
11          to the public the practice authorized by his or her license.

12          "(c) Be convicted of a criminal offense involving the prescription,  
13          consumption, or self-administration of any of the substances described in  
14          subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
15          record pertaining to, the substances described in subdivision (a) of this section, in  
16          which event the record of the conviction is conclusive evidence thereof.

17          "(d) Be committed or confined by a court of competent jurisdiction for  
18          intemperate use of or addiction to the use of any of the substances described in  
19          subdivisions (a) and (b) of this section, in which event the court order of  
20          commitment or confinement is prima facie evidence of such commitment or  
21          confinement.

22          "(e) Falsify, or make grossly incorrect, grossly inconsistent, or  
23          unintelligible entries in any hospital, patient, or other record pertaining to the  
24          substances described in subdivision (a) of this section."

25          8.       Section 490 of the Code states:

26                "A board may suspend or revoke a license on the ground that the licensee  
27          has been convicted of a crime, if the crime is substantially related to the  
28          qualifications, functions, or duties of the business or profession for which the

1 license was issued. A conviction within the meaning of this section means a plea  
2 or verdict of guilty or a conviction following a plea of nolo contendere. Any  
3 action which a board is permitted to take following the establishment of a  
4 conviction may be taken when the time for appeal has elapsed, or the judgment of  
5 conviction has been affirmed on appeal, or when an order granting probation is  
6 made suspending the imposition of sentence, irrespective of a subsequent order  
7 under the provisions of Section 1203.4 of the Penal Code."

8 9. Section 125.3 of the Code provides, in pertinent part, that the Board may  
9 request the administrative law judge to direct a licensee found to have committed a violation or  
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
11 and enforcement of the case.

#### 12 FACTS

13 10. On or about August 28, 2003, in a criminal case entitled *The People of the*  
14 *State of California vs. Lynn Varallo*, Superior Court of California, County of San Diego, Case  
15 No. CD175181, respondent Varallo was convicted upon her plea of guilty of violating Health and  
16 Safety Code section 11173(a) (obtaining a controlled substance by fraud, deceit,  
17 misrepresentation, or subterfuge), a felony. On or about September 29, 2003, the imposition of  
18 respondent's sentence was suspended and respondent was placed on probation for three (3) years  
19 under certain terms and conditions, including she serve ninety (90) days custody in the county  
20 jail. Respondent's conviction is substantially related to the qualifications, functions and duties of  
21 a registered nurse.

22 The facts and circumstances behind respondent's criminal conviction are that, on  
23 or about April 9, 2003, while working as a registered nurse for the Center for Oral and Facial  
24 Surgery, respondent checked out a vial of Fentanyl from a drug supply cabinet. Rather than  
25 transfer the Fentanyl to syringes, she kept the Fentanyl and replaced it with a saline solution into  
26 six syringes destined for operating rooms. Several days later, a nurse attempted to medicate a  
27 nine-year-old patient. Three of the Fentanyl syringes filled by respondent were used without  
28 result and the syringes were found to contain only a trace of Fentanyl.

1           11.     At all times material herein, Fentanyl was and is a Schedule II controlled  
2 substance as designated by Health and Safety Code section 11055(c)(8), and a dangerous drug  
3 within the meaning of Business and Professions Code section 4022.  
4

5                                   **FIRST CAUSE FOR DISCIPLINE**

6                                   (Substantially Related Conviction)

7           12.     Complainant incorporates herein by this reference the preamble and each of  
8 the allegations set forth in paragraphs 1 through 11 hereinabove.

9           13.     The registered nurse license held by respondent Varallo is subject to  
10 discipline under Business and Professions Code section 2750, for a violation of Business and  
11 Professions Code section 2761(f), based upon the criminal conviction described in paragraph 10  
12 hereinabove.

13                                   **SECOND CAUSE FOR DISCIPLINE**

14                                   (Unprofessional Conduct)

15           14.     Complainant incorporates herein by this reference the preamble and each of  
16 the allegations set forth in paragraphs 1 through 11 hereinabove.

17           15.     The registered nurse license held by respondent Varallo is subject to  
18 discipline under Business and Professions Code section 2750, for a violation of Business and  
19 Professions Code sections 2762(a) and 2762(b), based upon the criminal conviction described in  
20 paragraph 10 hereinabove.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse Number 411880, issued to Lynn Varallo;
2. Ordering Lynn Varallo to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/29/04

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

acc.wpd  
RDG:el